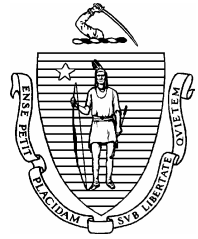


Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 06-0005

IN THE MATTER OF MICHAEL BENCAL

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Michael Bencal pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On March 3, 2005, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Bencal. The Commission concluded its inquiry and, on September 21, 2005, found reasonable cause to believe that Bencal violated G.L. c. 268A.

The Commission and Bencal now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. At all times relevant, Bencal was a Salem ward city councilor.
2. At all times relevant, James Hacker was the Salem parking director.
3. The mayor appoints the parking director for a two-year term, subject to confirmation by the city council. Reappointments are also subject to city council confirmation. Then-Mayor Stanley Usovicz appointed Hacker to a two-year term in January 2004. As a department head, Hacker may be called before the city council to address various issues including policy and personnel. The city council also sets the parking director's budget and acts on the parking director's proposals to raise or lower fees at city parking facilities. The city council also votes on whether to terminate the parking director, if such action is initiated by the mayor.
4. At all times relevant, Kevin Harvey was a Salem city councilor at-large.
5. On or about March 22, 2004, Hacker received a telephone call at home from Bencal. During that conversation, Bencal told Hacker that he would neither run for mayor nor support current Mayor Usovicz's bid for re-election. Rather than run for mayor himself, Bencal stated he intended to run for councilor-at-large and to support Harvey in the 2005

mayoral election. According to Hacker, Bencal indicated that Harvey would reappoint Hacker as parking director if Hacker raised \$4,000 for Harvey's mayoral campaign. Bencal then suggested that Hacker meet with Bencal and Harvey that weekend to discuss the matter in more detail but Hacker told Bencal he had plans and was unable to get together. Bencal said he would arrange a meeting and would call Hacker back.

Law

6. Section 23(b)(2) of G.L. c. 268A prohibits a public employee from knowingly or with reason to know, using or attempting to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

7. As a city councilor, Bencal was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.

8. By soliciting \$4,000 in contributions for Harvey's mayoral campaign from Hacker where he (Bencal) had the ability to impact Hacker's position as parking director then and in the future, Bencal used his city councilor position.

9. A campaign contribution is a privilege. A contribution to Harvey's mayoral campaign would be a privilege for Harvey as his mayoral campaign would receive it. A contribution to Harvey's mayoral campaign would also be a privilege for Bencal as his bringing in such contributions would put Bencal, who was planning on running for councilor-at-large, in a favorable light with Harvey.

10. Because the contributions sought were in excess of \$50, the privilege was of substantial value.

11. Such contributions would have been unwarranted as they were solicited in exchange for favorable treatment for Hacker concerning his parking director position.

12. Such contributions (by or from appointed municipal officials in exchange for favorable treatment concerning their positions) were not otherwise properly available to similarly situated individuals.

13. Therefore, by soliciting \$4,000 in contributions for Harvey's mayoral campaign from Hacker as described above, Bencal knowingly or with reason to know used or attempted to use his city councilor position to secure for Harvey and/or himself unwarranted privileges of substantial value that were not properly available to similarly situated individuals, violating § 23(b)(2).

Resolution

In view of the foregoing violation of G.L. c. 268A by Bencal, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Bencal:

- (1) that Bencal pay to the Commission the sum of \$2,000.00 as a civil penalty for violating G.L. c. 268A, § 23(b)(2); and
- (2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 21, 2006